

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2262 - SB 2195

March 9, 2020

SUMMARY OF ORIGINAL BILL: Requires the Board of Parole to include the offenses of which a paroled person was convicted when forwarding the names of all persons released on parole to the designated standing committees of the Tennessee General Assembly (TGA).

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENTS (014394, 015437, 016555): Amendment 014394 deletes all language after the enacting clause. Revises the definition of violent offender for eligibility of drug court treatment programs. Specifies that day reporting centers are a community based alternative to incarceration. Strongly encourages the court to consider utilizing available and appropriate sentencing alternatives for any defendant who has an appropriately documented behavioral health need or is chemically dependent. Revises the definition of a qualified defendant for eligibility for judicial diversion. Requires community correction program grant recipients to collect and provide outlined information to the Department of Correction (DOC) annually for program evaluation. Makes various changes to probation sentencing and the revocation of probation.

Amendment 015437 adds language to Amendment 014394 such that the substantive changes are to: (1) clarify that day reporting centers provide services for moderate to high-risk offenders with a substance abuse issue or co-occurring mental health issue; (2) exclude individuals with a previous conviction of domestic assault for which a sentence of confinement was served from consideration for judicial diversion; and (3) expand the definition of violent offender for drug court treatment program to include a person convicted of domestic assault.

Amendment 016555 deletes and replaces language in amendment 014394 such that the substantive changes are to: (1) specify that a judge may temporarily revoke probation for a violation of a condition of probation that does not constitute absconding; and (2) revise the maximum terms of incarceration authorized to be imposed for first and subsequent revocations of probation.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase Local Revenue – Exceeds \$5,000/FY20-21 and Subsequent Years

Other Fiscal Impact – Changes in probation and diversion determinations may lead to the increased use of alternatives to incarceration and a reduction in state incarceration expenditures and a corresponding increase in state expenditures related to sentencing alternatives; however, the timing and net impact of such changes are unable to be quantified with reasonable certainty.

Assumptions for the bill as amended:

- Based on information provided by the Department of Mental Health and Substance Abuse Services, any fiscal impact to the Department resulting from the revision of the definition of violent offender as it relates to participation in a drug court treatment program is estimated to be not significant.
- The DOC currently has six day reporting centers located across the state that serve as alternatives to incarceration by placing eligible participants in structured and intense outpatient programs.
- The Governor's proposed budget for FY20-21, on page B-210, includes \$60,000 in one-time and \$4,541,400 in recurring funding for the establishment of two new day reporting centers and an additional shift at an existing center. According to the Department of Finance and Administration, these new centers are not directly tied to this bill. Fiscal Review Committee staff assumes the additional resources will assist the DOC in meeting the requirements of the proposed legislation.
- Pursuant to Tenn. Code Ann. § 40-35-313(a)(B)(i)(d), one criterion of a qualified defendant for judicial diversion is that the defendant has not previously been convicted of a felony or a Class A misdemeanor for which a sentence of confinement was served.
- The proposed legislation revises this criterion of a qualified defendant for judicial diversion to a defendant that has not previously been convicted of a felony for which a sentence of confinement was served or a Class A misdemeanor within the previous 15 years for which a sentence of confinement is served.
- The proposed legislation will lead to at least 50 additional expunctions per year.
- Public Chapter 200 (2019) removed state application fees for applying for expunction; therefore, any increase in petitions for expunctions will not result in a significant fiscal impact to state revenue.
- Pursuant to Tenn. Code Ann. § 8-21-401(d)(2), a court clerk shall charge a fee of \$100 for proceedings related to expungements.
- The proposed legislation will result in a recurring increase in local revenue exceeding \$5,000 (50 x \$100) in FY20-21 and subsequent years.
- Based on information provided by the DOC, the proposed legislation is a refinement in the current data keeping practices for community correction program grant recipients. Any impact to the DOC to process grant recipient data is estimated to be not significant.

- The proposed legislation makes multiple changes to probation and diversion determinations made on or after July 1, 2020, including:
 - Limiting the period of probation for a felony offense to eight years;
 - Decreasing, from two years to one year, the extension of probation due to each determination at revocation hearing upon determining certain criteria are met;
 - Authorizing a trial judge to reduce an original judgement by the amount of time that defendant successfully served on probation and suspension of sentence or a portion of the time served prior to the violation;
 - Prohibiting a trial judge from revoking probation based on one instance of a technical violation; and
 - Authorizing a trial judge to temporarily revoke the probation and suspension of sentence if the violation is technical and allows for resentencing to a community based alternative to incarceration.
- The proposed legislation may lead to additional sentences of probation and community based alternatives to incarceration, shorter state incarceration sentences, shorter probation sentence lengths, and fewer admissions to state and local incarceration resulting from violations of probation.
- The proposed legislation may result in a recurring decrease in state incarceration expenditures and a corresponding recurring increase in state expenditures related to sentencing alternatives, and a recurring decrease in state expenditures related to sentencing alternatives due to shortened probation. The precise timing and net impact resulting from such changes are dependent on multiple unknown factors and cannot be determined with reasonable certainty.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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